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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR008

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S.

Navy Training and Testing Activities in the Northwest Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for a Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training and testing activities conducted in the Northwest Training and Testing (NWTT) Study Area for a period of seven years, from November, 2020 through November, 2027. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries

Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Piniak@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/military.htm* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region if certain findings are made and either regulations

are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Public Law (Pub. L.) 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the

wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment). On August 13, 2018, the 2019 NDAA (Pub. L. 115-232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years.

Summary of Request

On March 11, 2019, NMFS received an adequate and complete application from the Navy requesting authorization for the take of marine mammals, by Level A harassment and B harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) from the use of sonar and other transducers and in-water detonations. In addition, the Navy is requesting authorization of three takes of large whales by serious injury or mortality resulting from vessel strikes. NMFS received a revised application on June 24, 2019. The requested regulations would be valid for seven years, from 2020 through 2027.

This will be the third time NMFS has promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities in the NWTT Study Area, following those effective from November 9, 2010 through November 8, 2015 (75 FR 69275; November 10, 2010) and from November 9, 2015 through November 8, 2010 (80 FR 73555; November 24, 2015).

Description of the Specified Activity

The NWTT Study Area is composed of established maritime operating and warning areas in the eastern North Pacific Ocean region, including areas of the Strait of Juan de Fuca, Puget Sound, and Western Behm Canal in southeastern Alaska (see Figure 2-1 of the Navy's application). The Study Area includes four existing range complexes and facilities: the Northwest Training Range Complex, the Keyport Range Complex, Carr Inlet Operations Area, and the Southeast Alaska Acoustic Measurement Facility (Western Behm Canal, Alaska). In addition to these range complexes, the Study Area also includes Navy pierside locations where sonar maintenance and testing occurs as part of overhaul, modernization, maintenance, and repair activities at Naval Base Kitsap, Bremerton; Naval Base Kitsap, Bangor; and Naval Station Everett.

The following types of training and testing activities, which are classified as military readiness activities pursuant to section 315(f) of Pub. L. 101-314 (16 U.S.C 703), are included in the specified activity described in the Navy's application: anti-submarine warfare (sonar and other transducers, underwater detonations), mine warfare (sonar and other transducers, underwater detonations), surface warfare (underwater detonations), and other (sonar and other transducers).

The Navy's application includes proposed mitigation measures for marine mammals that would be implemented during training and testing activities in the NWTT Study Area (see Section 11 of the Navy's application). Proposed procedural mitigation measures and geographic mitigation areas generally include: (1) the use of Lookouts to observe for biological resources and communicate the need for mitigation implementation; (2) powerdowns, shutdowns, and delay of starts to avoid exposure of marine mammals to high levels of sound or explosive blasts more likely to result in injury or more serious behavioral disruption; and (3) limiting the use of

active sonar or explosives in certain biologically important areas to reduce the probability or severity of impacts when they are more likely to contribute to fitness impacts (see Figure 11-1 of the Navy's application).

The Navy also proposes to undertake monitoring and reporting efforts to track compliance with incidental take authorizations and to help investigate the effectiveness of implemented mitigation measures in the NWTT Study Area. This includes Adaptive Management, the Integrated Comprehensive Monitoring Program, the Strategic Planning Process, and Annual Monitoring and Activity Reports. As an example, under the Integrated Comprehensive Monitoring Program, the monitoring relating to the effects of Navy training and testing activities on protected marine species are designed to increase the understanding of the likely occurrence of marine mammals in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density of species) and to increase the understanding of the nature, scope, or context of the likely exposure of marine mammals to any of the potential stressors associated with the action.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: August 1, 2019.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

